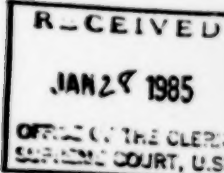


ORIGINAL

No. 84-786



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

STATE OF MAINE
Petitioner

v.

PERLEY MOULTON, JR.,
Respondent

ON WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT OF THE
STATE OF MAINE

RESPONSE TO PETITION FOR
A WRIT OF CERTIORARI

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EDITOR'S NOTE

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QUESTION PRESENTED FOR REVIEW

Whether the Sixth Amendment right to counsel is violated under Massiah v. United States, 377 U.S. 201 (1964), and United States v. Henry, 447 U.S. 264 (1980), where, in the course of a good faith investigation of crimes for which a defendant has not yet been charged, the police unintentionally obtain in the absence of counsel the defendant's incriminating statements about crimes for which he has already been charged?

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REASON FOR NOT GRANTING THE WRIT

The Maine Supreme Judicial Court has not interpreted the Sixth Amendment law in a manner requiring clarification by this Court.

In its Petition for a Writ of Certiorari, the State of Maine has argued that the Maine Supreme Court misinterpreted the Sixth Amendment law in a way that conflicts with the Court's decision in Massiah v. United States, 377 U.S. 201 (1964), Brewer v. Williams, 430 U.S. 387 (1977), and United States v. Henry, 447 U.S. 264 (1980).

Although the police may have arguably been investigating a separate crime when the co-defendant, Colson, was wired for conversation, the police or their agents knew or should have known that Moulton would make incriminating statements when the agent's questions were not made regarding the new crime but were deliberately asking for incriminating answers for the old crime. The incriminating statements made regarding the old crime certainly would be suppressed following the logic of any of the three above cited cases.

The State of Maine further argues that there is a conflict between the Maine Supreme Judicial Court's decision in Moulton and the First Circuit's decision in United States v. DeWolf, 696 F. 2d 1 (1st Cir. 1982).

The Maine Supreme Court agrees with the DeWolf decision in so far as introducing defendant's statements relating to a separate crime when obtained in the good-faith investigation. Moulton goes one step further in explaining that this does not apply when "the police knew, or should have known, that Moulton likely would make incriminating statements" regarding the old crime. This issue was not addressed by DeWolf and therefore is not in conflict. Because there is no conflict between DeWolf

and Moulton, this particular Writ of Certiorari should not be granted just because there may be a conflict between DeWolf (1st. Circuit) and Mealer (2nd Circuit).

The evidence in Moulton is more than sufficient to bolster the defendant's contention that the police and their agent did deliberately elicit and did create a situation likely to induce Moulton's post indictment incriminatory statements in the absence of counsel, with this finding, the defendant's statements would be suppressable under Massiah, De Wolf, Henry, or Mealer.

It is therefore respectfully submitted that the State of Maine's Petition for a Writ of Certiorari should not be granted because the Maine Supreme Judicial Court decision does not conflict with this Court's decision in Massiah v. United States, 377 U.S. 201 (1964), Brewer v. Williams, 430 U.S. 387 (1977), and United States v. Henry, 447 U.S. 264 (1980) or the First Circuit's decision in United States v. DeWolf, 696 F. 2d 1 (1st Cir. 1982).

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CERTIFICATE OF SERVICE

I, Anthony W. Beardsley, Esquire, hereby certify that pursuant to U.S. Sup. Ct. Rule 28.3 I have caused three (3) copies of the foregoing "Objection to Petition for a Writ of Certiorari" to be served on the only other party to this proceeding by depositing said copies in the United States Mail, postage prepaid, addressed to Petitioner's Counsel of Record, Wayne S. Moss, Ass't. Attorney General, as follows:

Wayne S. Moss
 Assistant Attorney General
 State House Station 6
 Augusta, Maine 04333

Dated at Ellsworth, Maine, this 18th day of January, 1985.

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